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THE QUORUM IN EUROPEAN LEGISLATURES.

BY THEODORE STANTON ; WITH LETTERS FROM LOUIS RUCHONNET, EX-PRESIDENT OF THE SWISS CONFEDERATION ; PRESIDENT VON LEVETZOW, OF THE GERMAN REICHSTAG ; HENRI BRISSEON, JULES MÉLINE, SOFUS HÖGSBRO, PRESIDENT OF THE DANISH FOLKETHING ; A. CHIAVASSA, OF THE ITALIAN SENATE, AND OTHERS.

THE position taken by Speaker Reed in the last Congress concerning the manner of counting a quorum in the House of Representatives renders interesting a glance at the way the same question is treated by the legislative bodies of Continental Europe. I have examined the subject with some care, and have put myself in communication with leading politicians and the presiding officers of political assemblies in several Continental countries. The result of my inquiries is both curious and instructive.

As in art, literature, and civil liberty, so in this matter of the legislative quorum, the influence of France has been felt in all parts of Continental Europe. The word quorum came into France from England, but the French have always taken its meaning in a much more restricted sense than that given to it by the House of Commons. But in the beginning the number of members necessary to constitute a quorum was much smaller than it is to-day. In the first Constituent Assembly, composed of 1,145 members, 200 made a quorum, or, rather, it was necessary simply that 200 deputies be "present" at the moment when the house was called to order. The constitution of September 14, 1791, stated that the legislative body, composed of 745 members, might not transact business unless "at least 200 deputies are present." It does not appear that the convention established any quorum. The rules of that body simply say that if, at the end of a sitting, less than 200 members are "present," any deputy may

demand that the roll be called. The Council of Ancients, with its 250 members, might not do business unless at least 126 deputies were "on the floor," while in the case of the Council of Five Hundred the "presence" of 200 members was required. During the consulate it was held by the constitution that "a legislative body may not transact business unless at least two-thirds of its members be present."

In proportion as parliamentary institutions developed in France under the Restoration and July Monarchy, the quorum question grew in importance, until what at first had been simply a matter of number became complicated by the manner of counting this number. The following interesting extracts from unpublished letters* to the author of this article bring out clearly the various aspects of this new phase of the quorum question in France.

M. Henri Brisson, who was president of the Chamber of Deputies for nearly four years, and afterwards Prime Minister, and who is a prominent deputy, writes :

"In France, the president of the Chamber has always held, at least in principle, that he had a right to count, in order to obtain a quorum, the deputies present at the moment a ballot was taken, *whether they voted or not.*† The putting into practice of this principle is attended with certain difficulties. However, I think I have seen M. Grévy exercise this right. I consider it incontestable even when not incorporated in the rules. But the difficulty is generally got around in this fashion : Our rules contain an article to the effect that, in case no quorum is present, a vote on the question under discussion will be called for at the next sitting, when the result will be valid whatever may be the number of deputies who take part in the ballot. So the president orders a vote, declares there is not a quorum, adjourns the sitting, calls the house to order again at the end of ten minutes, and then orders a new vote, which this time becomes valid. This expedient is, like all expedients, useful ; but its value may be questioned. Looked at from a legal standpoint, I should prefer the solution recently adopted by the House of Representatives. I

* I may say that the letters which appear in this article were all written with a knowledge of and apropos of the discussion concerning the quorum question in the House of Representatives which has recently taken place in THE NORTH AMERICAN REVIEW.

† The italics are M. Brisson's.

ought to add, however, that our procedure secures the end in view ; by which I mean that it discourages and renders of very rare occurrence the manœuvre which it aims to check."

M. Jules Grévy, who was M. Carnot's predecessor in the Presidency, had a very wide experience in presiding over parliamentary bodies. During the Republic of 1848 he was vice-president of the Assembly. When the monarchical National Assembly met in 1871, M. Grévy, though a stanch Republican, was chosen as its president, which post he held for over two years. Again in 1876 he became president of the Chamber of Deputies, which office he held till elected Chief Magistrate in 1879. His son-in-law, M. Daniel Wilson, himself a prominent deputy for many years, wrote me recently as follows :

"I have spoken with M. Grévy about the subject which interests you. His opinion was that it was wise to decide that, when it is a question of a quorum, the members present on the floor should be counted *whether they vote or not*.* In fact, a fraction of the house should not be permitted to paralyze, by refusing to answer the roll-call, all legislation. M. Henri Brisson is right when he tells you that M. Jules Grévy always considered that, in order to obtain a quorum, he could count as present, *whether they voted or not*, all members on the floor when the ballot was taken. M. Jules Grévy exercised this right, *with the approbation of the Bureau of the Chamber*,† not only once, but several times, while he occupied the presiding officer's chair."

M. Buffet, to-day a life-senator, was president of the National Assembly for nearly two years, between M. Grévy's two terms of office. He says on this same subject :

"It is certain, in the first place, that with us the quorum is decided by the number of *members present*,‡ and not by the number of those who vote. There is, however, one exception to this rule. An article of our constitution declares that the decisions of the Congress,§ united for the purpose of amending the constitution, are valid only when adopted by a majority of the total number of members belonging to the Congress. But in ordinary

* The italics are all M. Wilson's.

† The "Bureau" of the French Chamber of Deputies is composed of a president four vice-presidents, eight secretaries, and three questors or treasurers, elected by the deputies at the beginning of each session.

‡ The italics are M. Buffet's.

§ Composed of the Senate and Chamber of Deputies deliberating as one body.

cases a vote is valid when the number of *members present* exceeds one more than half of the membership of the body. I have always considered this figure, for the constitution of a quorum, excessive.

“Before a vote is taken, any member may call attention to the fact that there is not a quorum. If the president and the Bureau recognize the truth of the observation, the vote is of necessity postponed to the next sitting; but at this next sitting the ballot is valid, whatever may be the number of members present and voting. In practice it is very rare for a member to refer to this matter of a quorum. Many bills are carried by a rising and sitting vote in the presence of a house far smaller than that called for by the rules. When the vote is taken by means of cards, the quorum is established by the number of cards found in the baskets, although this number is often very much greater than the number of members present, on account of the very bad practice which prevails of voting for absent members.* This abuse may be checked, however, by calling the roll and requiring members to go up to the tribune to cast their vote.”

M. Pierre, general secretary of the presidency of the Chamber of Deputies, is one of the greatest authorities in France on parliamentary law, and is the author of several works on the subject. “He is the depository of all the precedents,” writes M. Buffet, “and, which is worth still more, the favorite pupil of M. Valette,† whom I consider, in the matter of parliamentary rules, as the law and the prophets.” Here is what M. Pierre writes me:

“The numerous precedents given in my work (‘Treatise on Parliamentary Law,’ which I published some years ago) will show you that the decision of the United States House of Representatives is in conformity with our jurisprudence. The rules of the French Chamber of Deputies require, in order that a vote be valid, the *presence*‡ of one more than half of the legal number of the

* The common mode of voting in the French Senate and Chamber is by means of cards (*bulletins*). Each deputy or senator has two boxes of cards with his name printed on them. The white cards are affirmative; the blue ones negative. When the pages pass about the boxes (*urnes*), a member not only votes for himself, but may put into the box the cards of his friends who happen to be absent. The practice is indeed “very bad,” for absent members are often made to cast a white card when, if present, they would have used a blue one, or *vice versa*.

† A distinguished French jurist, member of the Institute and author of many able legal publications. He died in 1878.

‡ The italics are M. Pierre’s.

full membership of the Chamber,—the *presence*, and *not the vote*. That is to say, if the necessary number of deputies is present in the chamber, but intentional absences reduce below the quorum the number of votes cast, the ballot is nevertheless declared to be valid. In this case, the Bureau must declare that, at the moment when the ballot was taken, one more than half of the representatives of the country were on the floor. This quorum question, as is shown by the precedents, has created frequent difficulties in France; so an article was recently added to the rules in order to meet the impossibility of balloting on account of the lack of a quorum. [M. Pierre then gives the remedy already mentioned by M. Brisson and M. Buffet.] In this way systematic absence is prevented.”*

M. Jules Méline, ex-Minister of Agriculture, a prominent member of the present Chamber of Deputies, and president of that body two or three years ago, writes me as follows:

“If, when a ballot is to be taken, a deputy states that half of the members are not on the floor, the president is obliged to consult the Bureau; and if the Bureau is unanimous in declaring that a quorum is present, then the ballot is valid; but if the Bureau is divided on the question, a roll-call is ordered for the purpose of finding out how many deputies are really on the floor. But this proceeding is not so effective as it would seem; for as members cannot be forced to appear at the tribune † to deposit their ballots, the systematic absence of a certain number of members may put a stop to legislation even when a quorum is really present. During the last Chamber ‡ these tactics were frequently employed by the Monarchical and Boulangist opposition. But the rules have provided against this intentional obstruction, which otherwise might completely paralyze the parliamentary régime.”

M. Méline then describes the expedient already explained by

* The advantages and disadvantages of the quorum in the French Chambers are given in full in M. Pierre’s little pamphlet, entitled “La Procédure Parlementaire.”

† *Le vote à la tribune et par appel nominal* is conducted in this way: One of the secretaries calls the roll, and each deputy, as his name is pronounced, goes up to the tribune, where the secretary gives him a ball (*une boule de contrôle*). He then deposits his card (*bulletin*) in the box placed on the tribune, and the ball in the box placed on the table of the secretaries. The secretaries, at the end of the ballot, count the cards and the balls, which must be equal in number. On each card is printed the name of the deputy who deposited it.

‡ The one ending in the summer of 1889, presided over by M. Méline.

M. Buffet and M. Brisson, of which, like the latter, he says : "It must be admitted that this proceeding is rather arbitrary." He then adds :

" It is by means of this ingenious expedient that the quorum difficulty is met and systematic obstruction prevented. But it must be confessed that thereby very little of the principle is left standing, and the question may well be asked whether its preservation is worth all this trouble. This device is fair and quite in conformity with the true aims of legislation. While it is evident that laws should always be made by the majority of the representatives of the country, it is also evident that these same representatives should do their duty. Coercive measures will always be found powerless to force them to perform this duty when they are determined to shirk it. There is something more important than the presence of the deputy at the moment when a ballot is to be taken ; it is his being on the floor during the debate which leads up to the ballot. For my own part, I should accord much more authority to a law made by two hundred deputies who had carefully followed the debates concerning it than to a law passed in a hurry by five hundred deputies who had heard nothing about it. You will perceive, therefore, that I am, at bottom, quite sceptical as to the advantages of the famous quorum. I would be more ready, it is true, to admit the principle into legislative bodies where the opposition is small, and so unable to use it as an instrument of war against the majority."

After France—perhaps I should say before France—the Continental nation which has had the most experience in legislative procedure is, doubtless, Switzerland. M. Louis Ruchonnet, President of the Confederation when these lines were written, says:*

" The recent decision of the United States House of Representatives conforms to Swiss procedure. With us, each chamber may deliberate legally when one more than half of the members are present. But every ballot is binding when it is a majority of those *voting*. It is not necessary, therefore, that the majority consist of one more than half of the membership of the Council, nor even one more than half of the members necessary to form a quorum. Let me illustrate. The Council of States (*Conseil des*

* M. Ruchonnet is now Minister of Justice and Police in the Swiss Federal Council, or Cabinet as we should say.

*États**) is made up of forty-four members. Its proceedings are legal if twenty-three members are present. If a ballot is taken, and eight members, for instance, vote aye and four no, and eleven do not vote at all, the ballot is valid and the Council has voted in the affirmative. In the National Council (*Conseil National* †) a two-thirds' vote of the members present is necessary in order to cut off further debate on a question before the house.

“Here is the way by which it is decided whether either house contains a quorum or no: At the hour fixed for opening the sitting, the secretary calls the roll. If the number of members answering to their names exceeds one-half of the total membership, there is a quorum, and the president declares the house to be ready for business. If this be not the case, no business can be transacted. If, during a sitting, the president or a member finds that there is not a quorum present, the roll is again called; but if nobody directs attention to the fact, business is often transacted without there being a quorum.”

In the Belgian Chamber of Representatives, I learn from the rules, a *liste de présence* is placed at the disposition of the members, a half-hour before the sitting begins, in order that they may sign it. When it is time to call the house to order, the president glances at the list, and orders the roll to be called for those who have not signed. If there is still no quorum, the house is adjourned to one of the four succeeding days, and the list of members present and absent is published in full in the *Annales Parlementaires*, which corresponds to our *Congressional Record*. Every member present who is on the floor at the moment a ballot is taken, but who does not vote, will be invited (“*sera invité*,” Art. 29 of the rules reads) by the president, after the roll-call, to give his reasons for not voting. The president, M. de Lantsheere, writes me:

“The question of the quorum in the Belgian house is regulated by the rules. In practice, the president generally opens the sitting without paying attention to the number of members who have signed the *liste de présence*. Many members do not themselves sign the list; their names are noted by a page. The roll-call at the opening of a sitting is resorted to in order to find out who are absent, and whose names shall be published in the

* Corresponding to the United States Senate.

† Corresponding to the American House of Representatives.

Annales, rather than to learn how many members are on the floor. This preliminary roll-call is considered a measure *de rigueur*. Otherwise the president never has recourse to it, except when absenteeism becomes too general and persistent. If he lets it be known that he intends to have the roll called, the announcement is generally sufficient to bring absent members upon the floor.

“Every member present on the floor of the house when a ballot is taken is obliged to take part in it. If a member will vote neither aye nor no, he is required to state the reason of his course. If half plus one of the members composing the body do not vote, the president adjourns the house, and this ballot is placed first on the order of business of the next sitting. In determining the number of members present, all are counted—those who vote negatively and affirmatively and those who decline to vote.

“The measure adopted in the United States is, therefore, practised in Belgium. I do not recall that it has given rise to any criticism. It acts only as a very mediocre bar against obstruction. It is always easy to quit the floor. On various occasions the opposition have done this; when a ballot was to be taken, they have left the house, and so made it impossible to transact business. It even once happened that the whole opposition refused to appear at a sitting, when it was known that the majority, on account of the forced absence of some of its members, could not form a quorum. On the other hand, there have been instances where members of the majority have left the floor in order to prevent a vote hostile to the cabinet.

“The rules of the Senate governing this matter do not differ materially from those of the House. In fact, this view may be said to have become a part of the common law of Belgium, for the law of May 18, 1874, concerning commercial corporations, declares (Art. 61) that at a general meeting of stockholders, in default of a by-law governing any particular case which may arise, recourse will be had to the ordinary rules governing deliberative bodies.”

The president of the Danish Folkething, or Lower House, Mr. Sofus Högsbro writes me :

“According to Article 61 of the present constitution of Denmark, ‘neither of the two houses may sit unless more than half of the members are present and vote.’ But it has long been the custom for members who reply, when the roll is called, ‘I do not

vote,' to be counted as present, and consequently to contribute to the formation of the quorum, notwithstanding their non-participation in the ballot. In cases of urgency, it is sometimes desired to suspend the rules of the house, which is permitted by Article 44, 'provided that no constitutional stipulations are affected thereby.' For this purpose, the majority must consist of three-quarters 'of those voting.' In such a case, I, as president of the chamber, consider it my duty to apply a more strict interpretation of the rules, and I do not permit members who reply, when their names are called, 'I do not vote,' to be counted among those who take part in the ballot. When, on March 28, 1890, a deputy protested against this interpretation (see the 'Proceedings of the Chamber,' p. 4,465), I answered that it was necessary to make a distinction between the quorum competent to debate a proposition and the quorum competent to vote the same proposition. For this latter purpose, in this matter of the suspension of the rules, only those may be counted for the constitution of a quorum who actually take part in the ballot by voting aye or no."

The president of the Dutch Chamber writes me :

"In the Netherlands the question which has agitated the Congress of the United States could not arise, for, according to the rules of our house, the sitting begins as soon as the absolute majority of the legal number of deputies is present. This same majority is necessary in order that a ballot may be valid. A single member may demand the ayes and noes, and then every member present is forced to answer to his name by saying *voor* (aye) or *tegen* (no)."

When I asked Mr. Beelaerts van Blohle what he would do if a member refused to answer when his name was called, I received this reply :

"Such a case is not provided for, and I cannot imagine that there could be any reason for a member to act in that way, as he would be openly defying the explicit rules of the house. The doors of the house always being open, members who do not wish to answer at roll-call have simply to retire. They are required to vote only when they are present."

It is evident that the minority in the Dutch Chamber is either very small or very docile.

M. Rodrigues de Freitas, who, a number of years ago, was the first Republican deputy to enter the Portuguese Chamber of

Deputies, and who was again a deputy last winter, writes me as follows from Oporto :

“Article 54 of the rules of the Portuguese Chamber of Deputies (law of March 22, 1876) reads as follows : ‘No deputy may be excused from voting if he is present at the moment when the ballot commences.’ One of the provisions in the rules of the House of Lords (law of April 20, 1843) is to the same effect. Our Administrative Code of July 27, 1886, contains a similar clause. The quorum consists of at least one-third of the total membership of the house. But on March 12 and 15, 1884, the Chamber of Deputies decided that the sitting could begin if only one-quarter of the members were present, and that this quorum was sufficient to pass on the minutes of the previous sitting, to listen to reports, and to debate bills, but not to vote them. In the House of Lords nineteen members constitute a quorum ; but, when only nineteen members are on the floor, it requires fifteen ayes to pass a measure. If more than nineteen peers are on the floor, then a majority of those present will suffice to pass a bill.

“Sometimes deputies leave the house when a ballot is about to be taken ; but often they remain, taking no part in the ballot, notwithstanding the rule which prohibits this course. But in this case they are not counted for the purpose of making a quorum. There are even instances where, in a ballot by roll-call, members present on the floor have declined to vote and yet were considered as absent by the president, although their non-participation in the ballot destroyed the quorum. You perceive, therefore, that the question of ‘those who do not vote’ has not been raised in Portugal. In fact, it strikes me as rather odd that, in order to obtain a quorum, a member is counted when he does not vote. It is much as if a piece of wood or a statue could, *per interim*, be a representative of the people.” *

The following bit of rather curious information comes to me from Christiania, from Mr. H. E. Berner, the well-known member of the Storthing, or Lower House, of Norway. He says :

“Article 73 of our constitution requires the presence of at least two-thirds of the deputies, and Article 13 of the law of July 7, 1828, concerning the responsibilities of deputies, punishes

* In a postscript to his letter M. de Freitas says : “ This information is furnished me by the most competent authority on this subject, Baron de St. Clement, honorary director of the stenographers’ bureau of the Chamber and author of several works on the history of the Portuguese Parliament.

with a fine of from 400 to 4,000 crowns * members who absent themselves from the chamber. Article 24 of the rules of the house, revised in 1890, is still more precise in this matter. You perceive, therefore, that our deputies are required to attend the sittings of the chamber and to take part in the ballots. Obstruction by a minority, whether by leaving the house or by not voting when on the floor, would be impossible in the Norwegian Parliament."

In answer to my inquiries, Herr von Levetzow, president of the German Reichstag, writes :

" Article 28 of the Imperial Constitution declares that a majority of the lawful membership of the Diet must be present in order that laws may be passed. At the beginning of each sitting the roll is called for the purpose of knowing whether a *quorum* is present. Whenever, in the course of the sitting, there is reason to doubt the presence of the necessary number of members, the roll is again called, as is prescribed by Article 54 of our rules. If it is found that less than 199 members are present, no business may be transacted and the Reichstag adjourns. If during this roll-call it should happen that a member present on the floor does not respond to his name, he would undoubtedly be counted with the other members if noticed by the functionaries ; but the rules of the Reichstag contain no provision for a case of this kind." †

Mr. Olof Wijk, formerly president of the Second Chamber of the Swedish Diet, sends me the following information from his home at Gothenburg :

" No quorum is necessary for the transaction of business in either of the two chambers of the Swedish Diet. The proceedings in the chambers may not be brought to a close so long as there is any member who wishes to address the house on the question under discussion. All that can be done is adjourn the debate

* That is, from about \$110 to about \$1,110.

† Baron Georg von Bunsen, once a prominent member of the Reichstag, sends me the following additional information concerning the manner of voting in that body :

" Our quorum consists of one more than half of the legal number of members. The latter being, in the case of the Reichstag, 397, its quorum is 199. A vote is taken either by members rising in their seats, or by members retiring into the lobby, thence to re-enter by different doors, or by all members present answering *yea* or *nay* when their names are called in alphabetical order. It may interest you to know that about twenty-six years ago Werner Siemens, the great electrician, offered the House of [Prussian] Representatives, of which he was then a member, an electric apparatus by which the votes of all present could be taken and shown instantaneously. This admirable offer, which was of course gratis, was rejected."

to another day. However, the Diet has never been troubled by 'obstruction,' although discussions may often have been prolonged more than was strictly necessary on account of the desire of members to let their constituents know the views of their representatives on important questions; for, as the ballot is secret in our Diet, the vote is not published. I may add that there is no way by which members can be forced to vote if they decline to do so."

Signor A. Chiavassa, director of the *Chancellerie* of the Italian Senate, writes in the name of the president, Chevalier Farini, as follows :

"The quorum required in our Parliament is determined by Article 53 of the fundamental statute of the kingdom, which reads as follows: 'The sittings and deliberations of the chambers are neither legal nor valid unless an absolute majority of their members be present.' Up to the present time the question has not been raised as to how the quorum shall be determined, so that the Senate has not been called upon to pronounce on this matter."

Accompanying Signor Chiavassa's letter are the printed rules of the Senate. Article 35 states that when a member directs the president's attention to the fact that there is no quorum, a roll-call is ordered. Then comes this paragraph: "All the members present are counted in making up the legal number"—that is, the quorum "necessary to give validity to measures which are carried by a majority vote of those taking part in the ballot."

I am informed that the rules of the Italian Chamber do not differ materially from those of the Senate. "It has become customary," writes my informant, "to multiply infinitely the number of regular leaves of absence, so that it may be easier to obtain a quorum."

The information which I have been able to obtain from several other countries is either incomplete* or adds nothing new to the facts already given. Examined with a view to its bearing on the recent action in the House of Representatives, one finds that Continental procedure favors, on the whole, the view taken by Speaker Reed. In France, where parliamentary

*The president of the Austrian Chamber of Deputies writes that "one hundred members constitute the quorum and the secretaries count to see if that number is present."

institutions are more highly developed than in any other European country, with the exception of England perhaps, the testimony of such able presiding officers as the ex-presidents of the Chamber of Deputies, whose letters have been given, is of special weight ; and it has been seen that Messrs. Grévy, Buffet, Brisson, and Méline, as well as M. Pierre, all agree as to the wisdom and justice of Speaker Reed's course.

Nor is it in France alone that the quorum difficulty has been met in much the same way as in Washington. In Norway we see members forced by a pecuniary fine to attend sittings and to take part in the ballots, while in the sister kingdom, Sweden, the obstacle is avoided by having no quorum. In Portugal the number required to constitute a quorum is very low,—one-third, and, in some cases, even one-quarter of the members,—while the rules of both the Chamber and the House of Lords require members to vote, although this article does not appear to be enforced by the presiding officer. In Denmark President Högsbro counts non-voters as present on the floor ; and in Germany Herr von Levetzow would be inclined to do the same thing if circumstances required it. The presiding officer of the Belgian Chamber of Representatives has evidently encountered many of the same difficulties as those which lately beset Speaker Reed, and has surmounted them in a somewhat similar manner, backed by stringent rules.' In Switzerland, too, legislation is not paralyzed by non-participation in the balloting, while one of the rules of the Italian Parliament reads very much like the measure which a few months ago caused such bitter discussion in the House of Representatives and in the public prints. At The Hague alone the perplexing quorum problem does not seem to have yet disturbed the proverbial placidity of the Dutch.

THEODORE STANTON.